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JUN 22 2009

In re Application of
Zhang
Application No. 09/804,654
Filed: March 12, 2001
Atty. Dkt. No.: 07977/097003/US3176D1D1

: **OFFICE OF PETITIONS**
: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
: :
: :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)," filed August 29, 2008.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

The Determination of Patent Term Adjustment mailed June 2, 2008 indicated that the application is entitled to adjustment of zero days. Applicant argues that the correct reduction for applicant delay is 84 days and that the correct adjustment for Office delay is 1,519 (915 days for delayed response to petition to withdraw holding of abandonment and 604 days for issuance beyond three years from filing date).

The correct PTA at the time of the allowance is zero days as indicated herein.

Applicants assert that the Office neglected to assess a reduction of one day in connection with the petition filed August 4, 2003.

The correct reduction in this regard is one day, as asserted by applicant. The reduction commenced August 4, 2003, the day after the date that is two months after the date that the Notice of Abandonment was mailed, and ended August 4, 2003, the date that the petition to withdraw the holding of abandonment was filed.

Applicant contests that the reduction under 37 CFR 1.704(b) of 246 days in connection with the response filed June 14, 2007 and assert that the correct reduction in this regard is 17 days.

The correct reduction in this regard is 17 days, as asserted by applicant. In accordance with 37 CFR 1.704(b), the reduction commenced May 29, 2007, the day after the date that is three months after the date that the non-final Office action was mailed, and ended June 14, 2007, the date that the response was filed.

Applicants asserts that the Office neglected to assess a reduction of 29 days in connection with "supplemental" replies pursuant to 37 C.F.R. § 1.705(c)(8)..."

The correct reduction in this regard is actually 25 days pursuant to 37 CFR 1.705(c)(10). A Notice of Allowance was mailed on January 11, 2008. Applicant filed a Request for Continued Examination (RCE) May 9, 2008. Prior to filing the RCE, applicant paid the issue fee. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE after the mailing of the Notice of Allowance on January 11, 2008 constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 25 days, counting the number of days in the period beginning on May 9, 2008 and ending on June 2, 2008, the date of mailing of the Notice of Allowance in response.

Applicant further argues that the application is entitled to an adjustment of 915 for "delayed response to Petition to Withdraw Holding of Abandonment..."

It is noted that a petition to withdraw the holding of abandonment was filed August 4, 2003 and that a decision was mailed June 6, 2006. However, 37 CFR 1.702 does not provide grounds for adjustment for Office failure to respond within a certain time period to a petition filed by an applicant. According, the application is not subject to further adjustment with regard to this particular matter.

The instant application for patent term adjustment also requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date of the application. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. *See*, 37 CFR 1.703(b).

Applicant is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Applicant is reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. *See*, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). *See, also, Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

Applicant is further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The Office acknowledges receipt of the required application fee of \$200.00. No additional fee will be required if applicants are solely requesting reconsideration of additional time related to failing to issue the patent within three years in accordance with 37 CFR 1.702(b).

This application is being forwarded to the Office of Data Management for processing into a patent.

In view thereof, as of the time of allowance, the application is accorded zero days of adjustment (adjustment totaling zero days less reductions totaling 80 days).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Adjusted PAIR Calculation

Day : Thursday
Date: 6/18/2009

Time: 15:45:30

PALM INTRANET**PTA Calculations for Application: 09/804654**

Application Filing Date:	03/12/2001	PTO Delay (PTO):	0
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	283
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	203		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
104	06/18/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		25	
103	06/18/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		17	
102	06/18/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		1	
101	06/18/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	246		
94	06/02/2008	MAIL NOTICE OF ALLOWANCE			
93	05/28/2008	ISSUE REVISION COMPLETED			
92	05/28/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
91	05/28/2008	CASE DOCKETED TO EXAMINER IN GAU			
90	05/28/2008	NOTICE OF ALLOWABILITY			
89	05/09/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
88	05/27/2008	DOCUMENT VERIFICATION			
87	05/09/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
86	05/09/2008	REFERENCE CAPTURE ON IDS			
85	05/09/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
84	05/22/2008	DATE FORWARDED TO EXAMINER			
83	05/09/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
82	05/22/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
81	05/09/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
80	05/12/2008	MAIL-RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE - WITH ASSIGNED PATENT NO.			

79	05/12/2008	RECORD PETITION DECISION OF GRANTED TO WITHDRAW FROM ISSUE - WITH ASSIGNED PATENT NO.		
78	05/12/2008	WITHDRAWAL PATENT CASE FROM ISSUE		
77	05/12/2008	WITHDRAWAL PATENT CASE FROM ISSUE		
76	05/09/2008	PETITION ENTERED		
75	03/12/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
74	05/09/2008	WORKFLOW - REQUEST FOR RCE - BEGIN		
73	04/23/2008	ISSUE NOTIFICATION MAILED		
72	05/13/2008	PATENT ISSUE DATE USED IN PTA CALCULATION		
71	04/14/2008	EXPORT TO FINAL DATA CAPTURE		
70	04/11/2008	DISPATCH TO FDC		
69	04/11/2008	APPLICATION IS CONSIDERED READY FOR ISSUE		
68	04/10/2008	ISSUE FEE PAYMENT VERIFIED		
67	04/10/2008	ISSUE FEE PAYMENT RECEIVED		
66	03/07/2008	FINISHED INITIAL DATA CAPTURE		
65	01/15/2008	EXPORT TO INITIAL DATA CAPTURE		
64	01/11/2008	MAIL NOTICE OF ALLOWANCE		
63	01/10/2008	ISSUE REVISION COMPLETED		
62	01/10/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED		
61	01/10/2008	CASE DOCKETED TO EXAMINER IN GAU		
60	01/07/2008	DOCUMENT VERIFICATION		
59	01/07/2008	NOTICE OF ALLOWABILITY		
56	11/27/2007	DATE FORWARDED TO EXAMINER		
55	11/20/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE		
54	11/27/2007	DATE FORWARDED TO EXAMINER		
53	11/20/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		
52	11/27/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)		
51	11/20/2007	WORKFLOW - REQUEST FOR RCE - BEGIN		
50	09/04/2007	MAIL FINAL REJECTION (PTOL - 326)		
49	08/28/2007	IFW TSS PROCESSING BY TECH CENTER COMPLETE		
48	08/23/2007	FINAL REJECTION		

47	06/20/2007	DATE FORWARDED TO EXAMINER			
46	06/14/2007	RESPONSE AFTER NON-FINAL ACTION	246	31	
45	06/14/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
44	04/16/2001	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	04/16/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	02/28/2007	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
41	02/28/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
40	01/31/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
39	02/12/2007	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
38	02/08/2007	FILE MARKED FOUND			
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36	10/13/2006	CASE DOCKETED TO EXAMINER IN GAU			
35	09/06/2006	FILE MARKED LOST			
34	09/01/2006	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
33	09/01/2006	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
32	08/17/2006	CORRESPONDENCE ADDRESS CHANGE			
31	07/11/2006	MAIL SUPPLEMENTAL NON-FINAL ACTION			
30	06/30/2006	CASE DOCKETED TO EXAMINER IN GAU			
29	06/27/2006	SUPPLEMENTAL NON-FINAL ACTION			
28	06/06/2006	MAIL NOTICE OF RESCINDED ABANDONMENT			
27	06/27/2006	NOTICE OF RESCINDED ABANDONMENT IN TCS			
26	06/06/2006	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
25	08/04/2003	PETITION ENTERED			
24	09/26/2003	FILE MARKED FOUND			
23	09/12/2003	FILE MARKED LOST			
22	06/03/2003	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
21	05/30/2003	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
20	07/17/2002	MAIL NON-FINAL REJECTION			

19	07/15/2002	NON-FINAL REJECTION			
18	05/31/2002	DATE FORWARDED TO EXAMINER			
17	05/10/2002	RESPONSE AFTER NON-FINAL ACTION	37	14	
16	05/10/2002	NEW OR ADDITIONAL DRAWING FILED			
15	05/10/2002	REQUEST FOR EXTENSION OF TIME - GRANTED			
14	01/03/2002	MAIL NON-FINAL REJECTION			
13	12/31/2001	NON-FINAL REJECTION			
12	10/17/2001	DATE FORWARDED TO EXAMINER			
11	10/10/2001	RESPONSE TO ELECTION / RESTRICTION FILED			
10	08/24/2001	MAIL RESTRICTION REQUIREMENT			
9	08/24/2001	REQUIREMENT FOR RESTRICTION / ELECTION			
8	04/16/2001	PRELIMINARY AMENDMENT			
7	06/08/2001	CASE DOCKETED TO EXAMINER IN GAU			
6.7	03/12/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	05/22/2001	APPLICATION DISPATCHED FROM OIPE			
4	04/24/2001	CORRESPONDENCE ADDRESS CHANGE			
3	04/23/2001	CORRESPONDENCE ADDRESS CHANGE			
2	03/30/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/12/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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